

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

incumbent.¹⁴ That ruling conflicts with the Commission's Order, and therefore cannot support any finding that SWBT has complied with the checklist.¹⁵

IV. SWBT'S FAILURE TO MAKE AVAILABLE PROMOTIONS OF NINETY DAYS OR LESS AT THE PROMOTIONAL RATE VIOLATES SECTIONS 251(C)(4) AND 251(B)(1).

14. The Commission's Order recognizes one other exception to the obligation of ILECs to make available, without unreasonable or discriminatory conditions or limitations, all of their service offerings to end users at a wholesale rate. The Commission's Rules do not require the ILEC to provide a wholesale discount on "short-term" promotions (i.e., discount plans in effect for 90 days or less). The ILEC, however, must allow the CLEC to obtain the offering at the rate offered to end-users, and then resell that offering. In addition, the incumbent must allow the CLEC to purchase the offering at the standard rate (i.e.,

¹⁴ Report and Recommendation of the Oklahoma Arbitrator, 11/13/96, PUD 960000218, at p.5 (affirmed by Order of the Oklahoma Corporation Commission, 12/12/96), Attachment 1.

¹⁵ Other state commissions in SWBT's region that have properly applied the Commission's rules have either held that SWBT's proposed restrictions do not apply to a reseller's end users, or declared them to be presumptively unreasonable subject to a showing that SWBT must make on a case-by-case basis before they can be enforced. The Texas arbitration award in the AT&T/SWBT interconnection arbitration, which was affirmed by the Texas Public Utility Commission, found that SWBT's across-the-board incorporation of tariff restrictions into its resale provisions was presumptively unreasonable, but allowed SWBT to retain the contiguous property limitation for PLEXAR and STS sources. SWBT's limitation on aggregation for purposes of the resale of volume discount offers was disallowed. (See Texas Arbitration Award, Public Utility Commission of Texas, Docket No. 16226, pp. 11-12, provided at Attachment 2.) The Arkansas Public Service Commission complied with this Commission's rule that all resale restrictions are presumptively unreasonable, including underlying tariff restrictions. (See Order of The Arkansas Public Service Commission, Docket No. 96-395-U, Order No. 5, pp. 9-11 (affirmed by the Arkansas Public Service Commission, 3/11/97), provided at Attachment 3.)

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

without the promotional discount) less a wholesale discount. The CLEC may not demand that the ILEC provide a price that reflects both the wholesale discount and the promotion discount.¹⁶

SWBT's Oklahoma SGAT provides that "SWBT promotions of ninety (90) days or less shall not be available [to CLECs] for resale."¹⁷ By this provision, SWBT refuses to allow CLECs to purchase and resell the short term promotions altogether, and thereby discriminates against CLECs vis-a-vis their other SWBT customers. This provision is thus an unreasonable and discriminatory condition or limitation on resale, in violation of Section 251(c)(4)(B) of the Act.¹⁸

16. The Kansas Corporation Commission ordered that if SWBT offers a promotion of 90 days or less at a rate that is less than the wholesale rate, the promotional rate must be available to CLECs for resale. This ruling is consistent with the Act, the Commission's Rules, and sound policy, whereas the OCC's findings on this issue are not. The Kansas arbitrator explained that any other conclusion would impair a new entrant's ability to compete with the incumbent LEC:

The Arbitrator's ruling is also based upon the necessity of promoting competition within the framework of a level playing field. The Arbitrator is concerned about an anticompetitive effect which might arise to AT&T's

¹⁶ Order ¶ 950; see also 47 C.F.R. § 51.613(a)(2).

¹⁷ SGAT, Appendix Resale ¶ 2.6.

¹⁸ This provision likewise violates Section 251(b)(1) of the Act, which prohibits all LECs from prohibiting the resale of any of its telecommunications services. The violation of Section 251(b) is significant because an SGAT may not be approved unless it satisfies all requirements of Section 251, including subsection (b). See 252(f).

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

detriment should they be denied the opportunity to purchase promotional services of less than ninety 90 days at the promotional rate. The Arbitrator foresees that a situation might arise where SWBT's costs for such a service might be lower than AT&T's and that SWBT might be able to undercut AT&T's prices in an anticompetitive manner. Further, there will be no harm to SWBT if AT&T is permitted to purchase services at the promotional rate.¹⁹

17. The following example illustrates the competitive disadvantage CLECs will suffer if promotions of less than ninety (90) days are not made available at the retail price:

Effects of Excluding Promotions from Resale²⁰

Call Forwarding

SWBT Retail	
SWBT Retail Price	\$3.00
SWBT Cost to Provide	<u>\$0.11</u>
SWBT Margin	\$2.89
SWBT Promotion	
SWBT Promotion Price	\$1.50
SWBT Cost to Provide	<u>\$0.11</u>
SWBT Margin	\$1.39
CLEC Price to Match Promotion	\$1.50
SWBT Wholesale Price to CLEC	\$2.41
CLEC margin	(\$0.91)

SWBT's exclusion of promotional offerings from its resale obligations is not only unlawful, but poses a significant threat to competition.

¹⁹ Kansas Arbitration Order in the Matter of the Petition By AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996, Docket No. 97-AT&T, 2/6/97, at pp. 12-13 (affirmed by the Kansas Corporation Commission, 3/10/97), Attachment 4.

²⁰ Based on SWBT's Oklahoma prices and publicly filed cost documents in Texas, Attachment 5.

V. SWBT'S IMPOSITION OF SERVICE CONNECTION CHARGES VIOLATES THE ACT'S WHOLESALE PRICING REQUIREMENTS

18. The pricing provisions of the Act applicable to resale require the incumbent to charge to resellers the applicable retail rates less the amounts that should be avoided when the incumbent is acting in a wholesale capacity. SWBT's existing interconnection agreements, and its SGAT in Oklahoma, attempt to impose charges on CLECs that are inconsistent with those requirements.

19. In particular, when a CLEC wins a customer and elects to serve it through resale of SWBT offering, SWBT's agreements and SGAT allow it to impose on the CLEC charges that are applicable when an end-user signs up for service with SWBT, or elects to change the service or features it has ordered. Many of the costs SWBT incurs in performing these functions directly for its retail customers, however, are or should be avoided when it is acting as a wholesaler and therefore should not be charged at all. The service order charges that SWBT's and SGAT agreements impose are a good illustration. When a customer orders service from SWBT, a service representative spends a substantial amount of time taking information from the customer that must be input into SWBT's ordering system. When the customer orders service from a CLEC, however, these labor intensive functions will be performed by the CLEC. Assuming that nondiscriminatory access to its operations support systems is being provided to CLECs -- an independent requirement of the Act, and an independent prerequisite to relief under Section 271 -- the CLEC will send that information by direct electronic feed to the SWBT ordering system. No manual labor will (or at least, should) be required by SWBT. SWBT's prices to CLECs do not reflect the costs that SWBT will avoid, contrary to the Act.

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

20. The provisions of SWBT's interconnection agreements and SGAT that purport to allow SWBT to impose charges for functions that it does not or need not perform are unlawful under the Act, and are an additional ground to deny SWBT's application for authorization to provide interLATA services in Oklahoma.

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF PHILLIP L. GADDY

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on April 28th, 1997.

Phillip L. Gaddy
Phillip L. Gaddy

SUBSCRIBED AND SWORN TO BEFORE ME this 28th day of April 1997.

Judith Smith Oglesby
Notary Public

My Commission Expires:



ATTACHMENT 1

BOB ANTHONY
Commissioner

CODY GRAVES
Commissioner

Attachment 1

OKLAHOMA

Corporation Commission

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P.O. Box 52000-2000 Oklahoma City OK 73152-2000
(405) 521-2756 FAX (405) 521-3512

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Office of Administrative Proceedings



Carolyn J. Tucker, Director

November 13, 1996

O. Carey Epps
Jack P. Fite
Jay M. Galt
Margie McCullough
Alistair Dawson
AT&T Communications of the Southwest, Inc.
6520 N. Western, Suite 300
Oklahoma City, OK 73116-7352

Re: Cause No. PUD 960000218

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST,
INC., FOR COMPULSORY ARBITRATION OF UNRESOLVED ISSUES
WITH SOUTHWESTERN BELL TELEPHONE COMPANY PURSUANT TO
§252(b) OF THE TELECOMMUNICATIONS ACT OF 1996

Dear Counsel:

Enclosed is a copy of the Report and Recommendation of the Arbitrator filed today with the Court Clerk's office. You have until the close of business (4:30 p.m.) on Wednesday, November 20, 1996, to file a request for approval or an appeal thereto, if you so desire. All requests for approvals or appeals shall be accompanied with a Notice of Hearing as they shall be automatically set by the Court Clerk's Office for hearing on November 25, 1996, before the Commission *en banc*.

Sincerely,

A handwritten signature in cursive script, reading "Robert E. Goldfield".

ROBERT E. GOLDFIELD
Arbitrator

REG:pm
Enclosure

NOV 13 1996

BEFORE THE CORPORATION COMMISSION OF COURT CLERK'S OFFICE, OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICATION OF AT&T COMMUNICATIONS) CAUSE NO. PUD 960000218
OF THE SOUTHWEST, INC., FOR COMPULSORY)
ARBITRATION OF UNRESOLVED ISSUES WITH)
SOUTHWESTERN BELL TELEPHONE COMPANY)
PURSUANT TO § 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996) ORDER NO.

HEARING: October 14, 15, 17, 22 and 31, 1996

APPEARANCES: O. Carey Epps, Jack P. Fite, Jay M. Galt, Margie
McCullough and Alistair Dawson, Attorneys
AT&T Communications of the Southwest, Inc.
Roger K. Toppins, Kendall Parrish, Curt Long and Michael
C. Cavell, Attorneys
Southwestern Bell Telephone Company
George M. Makohin, Attorney
American Communication Services of Tulsa, Inc.
Western Oklahoma Long Distance, Inc.
Mary Kathryn Kunc and Ron Comingdeer, Attorneys
Oklahoma Rural Telephone Coalition
Ronald E. Stakem and Stephen F. Morris, Attorneys
MCI Telecommunications Corporation
Nancy M. Thompson and Martha Jenkins, Attorneys
Sprint Communications Company, L.P.
David Jacobson, Attorney
Terral Telephone Company
Rick D. Chamberlain and Mickey Moon
Assistant Attorneys General
Office of the Attorney General, State of Oklahoma
John W. Gray, Senior Assistant General Counsel
Public Utility Division, Oklahoma Corporation
Commission

REPORT AND RECOMMENDATIONS OF THE ARBITRATOR

Introduction

On July 29, 1996, AT&T Communications of the Southwest, Inc. ("AT&T") filed an Application seeking arbitration of certain unresolved issues regarding an interconnection agreement between AT&T and Southwestern Bell Telephone Company ("SWBT"). The Application was brought pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("the federal Act") and OAC 165:55-17-7. In its application, AT&T requested this Commission to decide through arbitration specified disputed issues which negotiations between the parties had failed to resolve, and to approve contractual terms.

The federal Act seeks to promote local exchange telephone competition. It requires that an incumbent local exchange carrier ("ILEC") negotiate with a carrier ("competitive LEC") that seeks to interconnect with the ILEC or to purchase unbundled network elements or telecommunications services for resale from the ILEC. In the event those parties are not able to agree on all issues, Section 252(b) of the federal Act authorizes either party to request arbitration of the disputed issues before the state regulatory commission. This Commission has promulgated rules to facilitate local exchange competition. OAC 165:55-17-1 through 165:55-17-35.

The disputed issues which AT&T brought for resolution by arbitration were stated in its Application. AT&T included the following requests of this Commission: (1) to determine what telecommunications services SWBT should offer for resale; (2) to establish what discounted wholesale rates should apply for resale of services; (3) to determine what "unbundled" network elements should be provided; (4) to determine where interconnection is technically feasible; (5) to establish cost-based rates for interconnection; (6) to establish reciprocal compensation and meet point arrangements for transport and termination of traffic exchange between the respective carriers' networks; (7) to provide other essential facilities and services such as number portability, collocation and nondiscriminatory access to poles, ducts, conduits and rights-of-way; and (8) to provide dependable and flexible on-line electronic interfaces.

AT&T also requested the Arbitrator to adopt AT&T's proposed Interconnection Agreement (Appendix 9), with the rates, terms and conditions proposed by AT&T. If the Arbitrator declines to adopt any portion of AT&T's proposed Interconnection Agreement, AT&T requested it be directed to revise such portions as are necessary to comply with the Arbitrator's decision. SWBT also submitted

services previously only provided by SWBT as the incumbent LEC, is provided an opportunity to look for better prices, terms and conditions once new entrants are able to provide the service.

Mr. Gaddy testified that the FCC ordered such a provision to allow customers a "fresh look" for 800 services when 800 number portability was implemented.

Mr. Gaddy recommended that the Commission should allow any SWBT customer 180 days within which to request a change of local service provider without incurring termination, disconnect or any other penalties which would otherwise result from such termination.

Summary of SWBT testimony: SWBT witness Daniel Jackson opposed AT&T's "fresh look" proposal on the grounds that it amounted to an abrogation of existing SWBT contracts. Mr. Jackson testified that the AT&T fresh look proposal would allow customers the benefit of long-term contracts, e.g., discounted rates, without the obligation of having to fulfill the term commitments made by the customer when the customer entered into the agreement. Mr. Jackson further testified that there were competitive alternatives to most of the SWBT services that were offered under long-term contracts, e.g., SWBT's Plexar services. Mr. Jackson also testified that the contracts were entered into with the approval of the Commission.

Findings and Recommendation: Based upon the testimony, the federal Act and the applicable provisions of the FCC Order, combined with the fact that AT&T did not raise this issue in its Application for Arbitration,¹ the Arbitrator declines to make any finding with respect to this issue and recommends that the Commission decline consideration as to the merits of a "fresh look" policy with respect to long-term contracts at this time.

C. Use Restrictions

Summary of AT&T testimony: AT&T, through its witness Gaddy, proposed that there should not be any restrictions, including those found in SWBT's underlying tariffs, on the resale of SWBT's telecommunications services other than those expressly cited in the FCC Order and that new entrants should be permitted to combine resold products with other products as it chooses. With the exceptions of the restrictions on resale of residential services to business customers, and the limitation on the resale of means-tested services, such as Lifeline, to only those customers who qualify under the means test, Mr. Gaddy testified that SWBT should not be allowed to impose any restrictions on the use or resale of its telecommunications services. The FCC found in paragraph 939 of the FCC Order that resale restrictions, including those contained in the LEC's tariffs are presumptively unreasonable. The FCC also noted the ability to impose restrictions was likely to be evidence of market power and that in a competitive environment a seller would not be able to impose significant restrictions. Therefore, all restrictions or limitations other than those stated above should be prohibited.

Mr. Gaddy did not agree with Mr. Jackson that there was a difference between resale restrictions and a "use limitation."

Summary of SWBT testimony: SWBT witness Daniel Jackson testified that end user use restrictions that SWBT applies to its retail offerings should also be applied by AT&T and other competitive LECs that resell those offerings. He testified that a distinction must be made between "resale restrictions," which prohibit the resale of services (and which are not at issue in this arbitration proceeding) and "use restrictions" or "use limitations," which are contained as part of the service themselves. As an example, Mr. Jackson testified regarding SWBT's Low Use Service Plan which provides that a customer may not use the service at the same premises where the customer also subscribes to a flat rate local exchange service. Mr. Jackson testified that this restriction must continue with the service when it is resold by AT&T to its retail customers; otherwise, it is not the same service. Mr. Jackson testified about two other use

¹Section 252(b)(2) of the federal Act requires a party that petitions a state regulatory commission for arbitration to "provide the State commission all relevant documentation concerning...the unresolved issues." In a similar vein, § 252(b)(4)(A) requires the state commission to "limit its consideration" of any petition for arbitration "to the issues set forth in the petition and in the response...." AT&T witness Gaddy admitted on cross-examination that AT&T had failed to raise or identify the "fresh look" issue in its Application for Arbitration.

restrictions at issue in the arbitration proceeding--the contiguous property limitation associated with SWBT's Plexar-type services, and the limitations that require SWBT's services to be used exclusively by the customer to whom the service is provided, rather than through aggregation. Mr. Jackson testified that the Plexar contiguous property limitations were reasonable and had been approved by the Commission and should be enforced by AT&T when an AT&T customer buys Plexar on a resale basis. Similarly, Mr. Jackson testified that the prohibition against aggregating traffic over optional calling plans should also be enforced or a carrier could avoid the payment of access charges otherwise.

Findings and Recommendations: Based upon the testimony, the federal Act and applicable provisions of the FCC Order, the Arbitrator finds that SWBT's position is reasonable and is consistent with the federal Act and the FCC Order. Section 251(b)(1) imposes on ILECs the "duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services" which the Arbitrator distinguishes from use limitations as noted by witness Jackson. The parties informed the Arbitrator that they had stipulated as to which SWBT services were available for resale by AT&T. Therefore, no "resale restriction issues" per se have been submitted for arbitration.

The Arbitrator finds nothing in the federal Act that would permit a reselling competitive LEC to change the terms and conditions of an ILEC's service when offering it for resale. The FCC Order, however, addresses this issue in several places. Most importantly, the "final rules" adopted by the FCC as part of its Order in CC Docket 96-98, specifically states that "A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users." (Emphasis added). This is consistent with several provisions of the FCC's Order. For example, Paragraph 332 provides:

More specifically, carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer.

The Arbitrator finds persuasive SWBT's argument that, if the terms and conditions contained in SWBT's tariffs were not enforced by AT&T in reselling a particular service, in effect, AT&T would be offering a different service. This would be contrary to Paragraph 872 of the FCC Order, which provides that "The 1996 Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers." Paragraph 939 of the FCC Order, referred to by AT&T witness Gaddy, by its terms applies to "resale restrictions," not "use limitations."

The Arbitrator further finds and recommends that the prohibition against aggregating traffic over optional calling plans is reasonable and should be enforced when AT&T is reselling such services. This finding is consistent with Paragraph 875 of the FCC Order which provides that the federal Act does not require ILECs to make services available for resale at wholesale rates to parties "who are purchasing a service for their own use." It is also consistent with Paragraph 980 of the FCC Order which provides that ILECs are to continue to receive access charge revenues when reselling local services.

In summary, it is the Arbitrator's recommendation that all use limitations, terms and conditions contained in SWBT's tariffs with respect to services that are resold by AT&T be enforced by AT&T when providing such resold services to its customers.

D. Promotions

Summary of AT&T testimony: AT&T, through its witness Gaddy, proposed that all promotions offered by SWBT be made available to AT&T and other competitive LECs for resale at the appropriate wholesale discount. Promotions of 90 days or less should not only be available for resale but also receive the wholesale discount determined by this Commission. While the FCC at paragraph 950 of the FCC's Order established a presumption that the wholesale discount need not be offered to resellers, as a matter of public policy this commission should require SWBT to allow resale of promotions and apply the wholesale discount.

Summary of SWBT testimony: SWBT witness Jackson pointed out the provisions of the FCC Order that require only those promotions offered for more than 90 days should be offered for resale. He testified that SWBT intended to make promotions of more than 90 days in duration available for resale at the promotional rate,

less the wholesale discount, but that promotions of less than 90 days in duration would not be available for resale.

Findings and Recommendations: Based upon the testimony, the federal Act and applicable provisions of the FCC Order, the Arbitrator finds that SWBT's position is reasonable and consistent with the FCC Order. Paragraph 950 of the FCC Order provides that:

We therefore establish a presumption that promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers. Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates pursuant to section 251(c) (4) (A).

The Arbitrator finds that AT&T did not rebut the presumption contained in the foregoing paragraph and recommends that the provisions of Paragraph 950 be adopted and applied by the Commission in resolving this disputed issue.

E. Branding

In its Application for arbitration, AT&T requested that SWBT be required to brand all services provided to AT&T including, but not limited to, installation, repair/maintenance, and operator and directory assistance. In addition, AT&T requested that if SWBT could not brand such services with AT&T's name, SWBT should be required to unbrand its services. In response, SWBT agreed to remove its name from the card it currently leaves behind so that the end user would know that someone came to work on their phone, but the end user would not be able to identify it as being provided by SWBT. In addition, SWBT agreed to brand operator and directory assistance with AT&T's name on facilities-based lines although it was technically constrained from branding resold services with AT&T's name. Finally, SWBT objected to branding its installation and maintenance vehicles and personnel with another provider's name or, in the alternative, unbranding such facilities.

Summary of AT&T testimony: Phillip L. Gaddy testified on behalf of AT&T and clarified which branding issues were remaining to be resolved by arbitration. Mr. Gaddy clarified to the Arbitrator that AT&T had not requested re-branding of SWBT vehicles or personnel and that a decision was not being sought on that issue. Mr. Gaddy further advised the Arbitrator that the parties had reached an agreement on branding operator and directory assistance services and that no decision was being sought on that issue. The agreement provided that rebranding of such services would be available starting March 1997 and that, if allowed by federal and state law, SWBT would unbrand such services in the interim period. Mr. Gaddy testified that AT&T is asking for branding in the provision of SWBT's services such as operator services and directory assistance as required by the rules of the FCC. Mr. Gaddy testified that AT&T was also asking that when a SWBT employee makes a contact with a customer when representing AT&T (such as installation or repairs), that they indicate they are there on AT&T's behalf.

Summary of SWBT testimony: Eugene F. Springfield testified on behalf of SWBT concerning branding of SWBT repair services. Mr. Springfield testified that re-branding of such services in AT&T's name was not feasible since the SWBT repair technician would not be able to distinguish which competitor actually dispatched the repair call. Further, Mr. Springfield testified that SWBT had reached agreements with other competitors to not brand on their behalf in order to limit any potential discriminatory treatment by the repair technician.

Findings and Recommendations: Based upon the testimony, the federal Act and applicable provisions of the FCC Order, the Arbitrator recommends that with respect to installation, maintenance and repair services, the Commission require SWBT personnel to identify that they are acting on AT&T's behalf when providing such services to AT&T customers. The Arbitrator believes that such identification is in the public's best interest for safety and security reasons, and is also necessary to minimize customer confusion where SWBT personnel are responding to a call by an AT&T customer. The Arbitrator further recommends that "AT&T branded" materials, to be utilized by SWBT repair technicians when dealing with AT&T's customers, be furnished to SWBT by and at the sole expense of AT&T. Branding recommended herein shall not include re-branding of SWBT vehicles or personnel. Rather, the Arbitrator recommends that SWBT continue to brand its vehicles and personnel in the name of SWBT.

II. Operational and Technical Issues

A. Electronic Interfaces

ATTACHMENT 2

PUC DOCKET NOS. 16189, 16196, 16226, 16285, and 16290

PUBLIC UTILITY COMMISSION OF TEXAS

FTA96 §252 ARBITRATION PANEL

DOCKET NO. 16189 §
 PETITION OF MFS COMMUNICATIONS §
 COMPANY, INC. FOR ARBITRATION OF §
 PRICING OF UNBUNDLED LOOPS §

DOCKET NO. 16196 §
 PETITION OF TELEPORT §
 COMMUNICATIONS GROUP, INC. FOR §
 ARBITRATION TO ESTABLISH AN §
 INTERCONNECTION AGREEMENT §

DOCKET NO. 16226 §
 PETITION OF AT&T COMMUNICATIONS §
 OF THE SOUTHWEST, INC. FOR §
 COMPULSORY ARBITRATION TO §
 ESTABLISH AN INTERCONNECTION §
 AGREEMENT BETWEEN AT&T AND §
 SOUTHWESTERN BELL TELEPHONE §
 COMPANY §

DOCKET NO. 16285 §
 PETITION OF MCI §
 TELECOMMUNICATIONS §
 CORPORATION AND ITS AFFILIATE §
 MCIMETRO ACCESS TRANSMISSION §
 SERVICES, INC. FOR ARBITRATION AND §
 REQUEST FOR MEDIATION UNDER THE §
 FEDERAL TELECOMMUNICATIONS ACT §
 OF 1996 §

DOCKET NO. 16290 §
 PETITION OF AMERICAN §
 COMMUNICATIONS SERVICES, INC. §
 AND ITS LOCAL EXCHANGE §
 OPERATING SUBSIDIARIES FOR §
 ARBITRATION WITH SOUTHWESTERN §
 BELL TELEPHONE COMPANY §
 PURSUANT TO THE §
 TELECOMMUNICATION ACT OF 1996 §

ARBITRATION AWARD

SWBT will not be compensated by the LSP for any additional employees reviewing the work. The SWBT employees assigned for review and inspection of LSP personnel work must be available during all normal business hours for such assignments to minimize inconvenience to the LSP. If the work at SWBT sites is performed by a contractor agreed upon by the LSP and SWBT, SWBT shall be responsible for the costs of its employees sent to inspect the contractor's work. However, if the LSP personnel perform work at the site of an interconnection point where the participation of SWBT personnel is integral for the successful completion of the work, the LSP is responsible for paying the costs of SWBT personnel reasonably needed for such work. *FTA96 §224(f)(1) and §251(b)(4). (AT&T, MCI)*

16. SWBT may recover the costs of modifying its outside plant facilities for LSP space requirements. SWBT may not require that all costs of the modification be paid up-front before work commences. The Arbitrators find that it is commercially reasonable for contractors to be paid half of their compensation at 50% completion of work, and half at 100% completion. To facilitate the sharing of costs by all parties benefiting from the modification, SWBT must establish a methodology whereby the LSP initiating the modification is charged for the work, and then reimbursed on a pro rata basis for any portion of the facility later used by SWBT or another LSP. *FTA96 §224(f)(1) and §251(b)(4). (AT&T, MCI)*

17. The Arbitrators note their concern that the 15-step process proposed by SWBT for administrative approval of LSP requests for pole attachments and conduit space may unnecessarily delay the fulfillment of valid LSP requests. The Arbitrators do not endorse the process proposed by SWBT; neither do they prohibit its use. The SWBT administrative approval process will be a subject of the June 13, 1997 review of interconnection issues conducted by the Commission. The Arbitrators encourage the parties to provide more streamlined alternatives to the 15-step approval process at the time of the six-month review. SWBT may charge reasonable, cost-based ancillary fees to recover administrative costs incurred in processing LSP requests for pole attachments and conduit space. If SWBT chooses to charge such fees, it must provide cost justification for the fees, consistent with the costing standards adopted in this proceeding. *FTA96 §224(f)(1) and §251(b)(4). (AT&T, MCI)*

C. RESALE

18. SWBT may retain the continuous property tariff restriction for Plexar and STS services, which has been found reasonable by the Commission. SWBT may not retain the limitation on aggregation for purposes of the resale of volume discount offers.

Additional tariff restrictions, other than the cross-class restriction allowed by FTA96 §251(c)(4)(B), are presumptively unreasonable. *FTA96 §251(c)(4)(B). (AT&T, MCI)*

19. SWBT is not required to provide a fresh look opportunity for its customers currently under term plans. *FTA96 §251(b) and (c). (AT&T, MCI)*

20. SWBT must give an LSP notice of new promotions or products at the time a Preliminary Rate Authority (PRA) is transmitted, or, in situations where a PRA would not be issued, within 90 days (45 days for price changes) of the expected change in services or operations that would affect the LSP. *FTA96 §251(c)(4) and (5). (AT&T, MCI)*

21. SWBT is not required to provide a wholesale discount to LSPs for promotions of 90 days or less. SWBT must, however, offer the promotion for resale. For promotions of more than 90 days, SWBT shall make the promotion available for resale at a wholesale discount according to the specific percent discount for the service as applied directly to the value of the promotional rate. *FTA96 §251(c)(4) and (5). (AT&T, MCI)*

D. NUMBERING ISSUES

22. SWBT is not required to make Route Index-Portability Hub (RI-PH) or Directory Number-Route Index (DN-RI) available to LSPs. SWBT shall test RI-PH and DN-RI for technical feasibility. SWBT shall attempt to obtain the testing protocols used by other RBOCs, such as Ameritech and BellSouth. SWBT shall attempt to obtain LSPs' agreement as to the appropriate testing protocols. If SWBT and an LSP cannot agree to the testing protocols, either party may petition the Commission for arbitration without waiting 135 days, as might otherwise be required under FTA96. SWBT shall attempt to obtain LSPs' agreement as to the results of the testing and whether RI-PH or DN-RI has been shown to be technically feasible. If SWBT and an LSP cannot agree to the results or the conclusion regarding technical feasibility, either party may petition the Commission for arbitration without waiting 135 days, as might otherwise be required under FTA96. *FTA96 §251(b)(2). (AT&T, MCI)*

23. SWBT and each LSP shall absorb its own costs of providing Interim Number Portability (INP). *FTA96 §251(e)(2). (ACSI, AT&T, MCI, MFS, TCG)*

24. SWBT and the LSP must implement a meet-point billing arrangement under which the forwarding carrier is allowed to retain any applicable terminating transport fees but no other portion of the switched access charges (such as Carrier Common Line and switching-related charges). *FTA96 §252(d). (AT&T, MCI)*

ATTACHMENT 3

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF AT&T COMMUNICATIONS)	DOCKET NO. 96-395-U
OF THE SOUTHWEST, INC.'S PETITION FOR)	ORDER NO. <u>5</u>
ARBITRATION OF UNRESOLVED ISSUES WITH)	
SOUTHWESTERN BELL TELEPHONE COMPANY)	
PURSUANT TO §252(b) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

ORDER

On November 15, 1996, AT&T Communications of the Southwest, Inc. (AT&T) filed a Petition for Arbitration pursuant to §252(b) of the Telecommunications Act of 1996 (1996 Act), 47 U.S.C. §252(b). In its Petition, AT&T sought compulsory arbitration to establish an interconnection agreement between AT&T and Southwestern Bell Telephone Company (SWBT). AT&T delivered its request for negotiation of an interconnection agreement pursuant to 47 U.S.C. §252(a) to SWBT on June 11, 1996.

On Nov. 22, 1996, the Commission entered Order No. 1, designating Sarah M. Bradshaw, Administrative Law Judge (ALJ), as the arbitrator in this Docket. The Commission scheduled the arbitration hearing to begin on January 21, 1997. The Commission directed that the arbitration be conducted on a final offer basis with the Arbitrator selecting one party's final offer on each issue. AT&T and SWBT submitted their last best offers (LBO) on each of the disputed issues in conjunction with the post-hearing briefs filed on February 10, 1997.

On December 10, 1996, SWBT filed a Response to the Petition of AT&T pursuant to 47 U.S.C. §252(b).

SWBT's position on this issue is direct conflict with the FCC Order. The FCC found that "below cost services are subject to the wholesale rate obligation under section 251(c)(4)." FCC Order ¶956. The FCC declined to limit the resale obligations of ILECs with respect to services that may be priced below cost when the 1996 Act does not impose such a limit on resale. Further, the FCC states that "because a service may be priced at below-cost levels does not justify denying customers of such a service the benefits of resale competition." FCC Order ¶956.

Mr. Dan Jackson testified that if SWBT has to resell distance learning services or other services offered to qualifying institutions at a discount to AT&T, it may no longer offer such services at a discount to qualifying institutions such as schools, libraries or health care facilities in rural areas where SWBT does not face competition. Tr. 1293-4. Should SWBT choose not to discount such services in rural areas to avoid its obligation to resell distance learning services at a wholesale discount to AT&T, SWBT would not "have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or ... receive reimbursement utilizing the support mechanisms to preserve and advance universal service." 47 U.S.C. §254(h)(1)(B).

AT&T's LBO that distance learning services must be available for resale at the wholesale rate is in compliance with the FCC Order and is hereby adopted.

5. WHAT RESELL RESTRICTIONS SHOULD BE PERMITTED, IF ANY?

According to AT&T, with the exception of cross class restrictions , all resale restrictions are presumptively unreasonable. AT&T's position is that this presumption applies to restrictions in SWBT's underlying tariffs. It is SWBT's position that "AT&T must abide by the existing

Commission-approved use limitations and service parameters in SWBT's retail tariffs." SWBT contends that AT&T confuses resale restrictions with use limitations.

Both the 1996 Act and Act 77, have restrictions on cross-class resale of residential services to nonresidential customers as pointed out by both AT&T and SWBT. With regard to other restrictions, the FCC concludes that:

[R]esale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC's underlying tariff. As we explained in the NPRM, the ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position. FCC Order ¶939.

In 47 C.F.R. §51.613(b), the FCC provides that for an ILEC to impose any restrictions beyond those provided in 51.613(a), it must prove to the state commission that the restriction is reasonable and nondiscriminatory. SWBT cites ¶963-4 wherein the FCC concludes that certain "restrictions are presumptively unreasonable" and others should be "presumed unreasonable" as support for its position that its tariff limitations may be imposed on CLECs purchasing services for resale. The cited provisions of the FCC order conflict with the SWBT position.

SWBT states that end-user use limitations are "approved by the Commission" in SWBT's tariffs for retail services. However, SWBT never explains why the Commission past authority to review tariffs for retail services is relevant to a wholesale sale of telecommunications services. SWBT's tariffs are not subject to Commission review and approval pursuant to Act 77. Any limitations, restrictions or rates contained in SWBT tariffs are solely the responsibility of SWBT

and are not subject to regulatory oversight or approval. .

AT&T's LBO complies with the FCC Order and is approved.

6. SHOULD SWBT'S TARIFFS CONTAIN THEIR WHOLESALE OFFERINGS?

AT&T's position is that SWBT should be required to "file tariffs for approval by the APSC" with the terms, prices and conditions of its wholesale service offerings. SWBT contends that it will make its services available for resale through the terms of an interconnection agreement with a CLEC. According to SWBT, an appendix to the interconnection agreement will contain the prices, terms and conditions for resale of telecommunications services.

AT&T's position is contrary to the concept that the interconnection agreement is a contract between the parties which should embody the terms and conditions for resale of telecommunications services by SWBT to AT&T. SWBT's position is adopted.

7. WHAT ARE THE PROPER PROCEDURES FOR CUSTOMERS CHANGING LOCAL COMPANIES?

AT&T's position on this issue is that a customer change process should be implemented which requires that customer changes should be provided at intervals no longer than it takes SWBT to transfer customers between interexchange carriers (IXCs). In an electronic interface environment, where a customer makes no change in the service received or orders fewer services when changing LECs, the charge should be no more than five dollars (\$5.00). As a compromise, AT&T offers to agree to a manual order rate of twelve dollars (\$12.00). Exh. 13. AT&T contends that customers should be able to add new features at the time of change with the CLEC paying the change charge and the wholesale nonrecurring charges for the added features. SWBT

ATTACHMENT 4

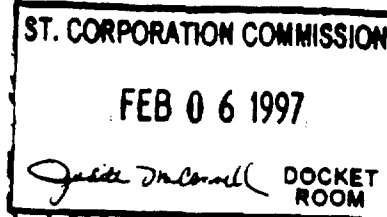
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

FEB 7 1997

DALLAS

Before Arbitrator: Martha L. Cooper

In the Matter of the Petition by AT&T)
Communications of the Southwest, Inc. for)
Compulsory Arbitration of Unresolved)
Issues with Southwestern Bell Telephone)
Company Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)



Docket No.
97-AT&T-290-ARB

ARBITRATION ORDER

NOW, the above-captioned matter comes for consideration and determination before Arbitrator Martha L. Cooper, appointed by the State Corporation Commission of the State of Kansas (Commission or KCC). This matter arises under section 252 of the Federal Telecommunications Act of 1996 (the Act), pursuant to which the Commission has the power to appoint arbitrators to hear interconnection disputes between a "requesting telecommunications carrier" as defined by 47 U.S.C. section 153(a)(26) and incumbent local exchange companies as defined under section 251(h) of the Act. Having reviewed the files and being fully advised of all matters of record, the Arbitrator finds and concludes as follows:

BACKGROUND

On November 14, 1996, AT&T Communications of the Southwest (AT&T) filed the above entitled petition for arbitration pursuant to section 252 of the Federal Telecommunications Act.

Though the parties do not cite to ¶ 964 of the FCC's Interconnection Order, it is interesting to note that the FCC considers all other cross-selling restrictions presumptively unreasonable. The FCC states it is not inclined to allow the imposition of restrictions that could deter the emergence of competition.

Holding

The Arbitrator holds that AT&T is permitted to aggregate end users in a shared tenant services arrangement without restrictions. The Arbitrator believes that ¶¶ 963 and 964 of the FCC's Interconnection Order are controlling concerning this issue. Competition means innovative uses of technology will benefit the public by providing new services and by driving down costs on services which are made obsolete by emergence of the new technology.

SWBT has not provided sufficient evidence to rebut the presumption that its restrictions are unreasonable.

C. AT&T Issue #14: Promotional Offerings of 90 Days or Less

Facts

AT&T contends that promotional offerings of 90 days or less should be available for resale at the promotional rate. It does not contend that promotional offerings of 90 days or less need be made available for resale at a discount.

SWBT argues that promotions of 90 days or less are not available for resale. SWBT believes that the associated retail service should be available for resale at the retail rate less the applicable resale discount.

Law

FCC Rule at section 51.605 states in pertinent part:

(a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates that are at the election of the state commission - -

(1) consistent with the avoided cost methodology described in sections 51.607 and 51.609 of this part; or

(2) interim wholesale rates, pursuant to section 51.611 of this part;

(b) Except as provided in section 51.613, of this part, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC. [emphasis added].

Section 51.613 referenced above concerns restrictions on resale. The applicable part is section 51.613(a)(2) which deals with short term promotions. This portion of the FCC Rules states:

an incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotion rate only if:

(A) such promotions involve rates that will be in effect for no more than 90 days; and

(B) the incumbent LEC does not use promotional offerings to evade the wholesale rate obligation, for example, by making available a sequential series of 90-day promotional rates.

Holding

The Arbitrator holds that promotional offerings of 90 days or less shall be available for resale at the promotional rate. Section 51.613 does not restrict a state commission from ordering a LEC to resell the service at the promotional rate. The Arbitrator rules that if SWBT runs a short term promotion at a rate lower than the